

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 10/27/2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 DIANA TOLOZA and PORFIRIO EMICENTE, on :
 behalf of themselves and all others similarly :
 situated, :

Plaintiffs, :

-against- :

FLORIDITA RESTAURANTS, INC. d/b/a LA :
 FLORIDITA and RAMON DIAZ, :

Defendants. :
 -----X

20 Civ. 5948 (JPC) (SDA)

NOTICE OF DISMISSAL
PURSUANT TO
FRCP 41(a)(1)(A)(i)

PLEASE TAKE NOTICE that the claims of Plaintiffs Diana Toloza and Porfirio Emicente, and opt-in plaintiff Sergio Hernandez, are hereby dismissed in their entirety, without prejudice, as against the Defendants pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), without costs or attorneys' fees to any party.

Dated: New York, New York
October 15, 2020

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It is an open question in this Circuit whether parties may settle FLSA cases without court approval or Department of Labor supervision by entering into a Rule 41(a)(1)(A) stipulation without prejudice. *See Cheeks v Freeport Pancake House, Inc.*, 796 F.3d 199, 201 n.2 (2d Cir. 2015). In light of Plaintiffs' notice of voluntary dismissal, Plaintiffs shall, by November 13, 2020, file a letter with the court stating whether a settlement has been reached. If yes, Plaintiffs and Defendant Floridita Restaurants, Inc. shall submit *Cheeks* material.

SO ORDERED.

Date: October 26, 2020
New York, New York


 JOHN P. CRONAN
 United States District Judge